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No. 425

# In the Supreme Court of the United States

OCTOBER TERM, 1950

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

This reply brief is submitted primarily in answer to respondent's contention that the words "national or international labor organization of which it is an affiliate or constituent unit," as used in Sections 9 (f), (g), and (h), have the same meaning as the words "labor organization * * * affiliated with a labor organization national or international in scope," as used in the second proviso to Section 10 (c).

## I

As we pointed out in our main brief, p. 100, when terms which have a technical meaning in



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labor relations parlance are used in the Act with reference to the structure or affairs of labor unions, they are to be given that meaning unless it clearly appears that Congress intended to attach another, and different meaning to the words. See *O'Hara* v. *Luckenbach S. S. Co.*, 269 U. S. 364, 370–371. This rule is applicable, we believe, to the phrase "national or international labor organization," which is a term of art in labor parlance, but not to the phrase "labor organization national or international *in scope.*" [Italics added.] The latter phrase, in which the words "labor organization" and "national or international" are transposed, and the qualifying words "in scope" are added, is completely unfamiliar to labor relations terminology.

If Congress had intended that the same meaning should be attached to this phrase as to the phrase "national or international labor organization" there is no reason to suppose it would not have used that phrase in Section 10 (c), rather than a new and different one. This seems particularly clear since, in view of the preceding language in Section 10 (c), the use of the phrase "national or international labor organization," would have been entirely appropriate from the standpoint of draftsmanship. The legislative history of the second proviso to Section 10 (c) shows, we think, that Congress chose a different phrase in that Section because the Section was directed

at an entirely different goal, and the term of art used in Sections 9 (f), (g), and (h) was not appropriate to express Congress' meaning.

The legislative history shows that the phrase "labor organization national or international in scope" was used in Section 10 (c) to refer to the A. F. L. and C. I. O., and only to them. Congress adopted the Section 10 (c) proviso to put an end to the Board's "admitted practice * * * of discriminating against independent unions, simply because they are independent, by ordering with respect to them more drastic penalties than it orders for unions affiliated with the A. F. of L. or the C. I. O. in similar circumstances." H. Rep. No. 245, 80th Cong., 1st Sess., p. 42. See also, S. Rep. No. 105, 80th Cong., 1st Sess., p. 26; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 54–55. Senator Taft made a similar, more elaborate, statement on the Senate floor. 93 Cong. Rec. 3838, Leg. Hist., pp. 1013–1014. He said: "The bill provides that [the Board] must give independent unions, * * * the same treatment that would be given a union affiliated with the AFL or the CIO. Numerous representatives

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[1] In the preceding sentence, Senator Taft had illustrated the favoritism which had been displayed toward local unions which affiliated with a national union which was in turn affiliated with the A. F. L. or C. I. O. He said: "If there be an AFL or CIO affiliate union which is company dominated, but which affiliates itself with the national AFL union, then the Board will permit it to purge itself promptly and will certify it as bargaining agent."

of independent unions appeared before the committee who told us how unfairly they had been treated. It was felt that theirs was a good case." Among the witnesses whom Senator Taft thus referred to was Joseph Beirne, who testified on behalf of the National Federation of Telephone Workers, an unaffiliated national union. Hearings before the Senate Committee on Labor and Public Welfare on the Labor Relations Program, 80th Cong., 1st Sess., pp. 1179, 1203, 1215. Senator Taft specifically mentioned that the "telephone union" was one which the new bill was designed to protect against unequal treatment.

The Board likewise explained its old policy and the Congressional purposes in adopting the amendment to Section 10 (c) as follows:[2]

> The Board did not, however, apply the full disestablishment remedy to employer-controlled or assisted labor organizations which were affiliated with a national or international federation. * * * This difference in treatment, as between affiliated and non-affiliated organizations, was based upon the Board's belief that a labor organization affiliated with a national or international federation that was outside the ambit of the employer's control could not be permanently and completely subjugated to the will of the employer. * * *

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[2] *Carpenter Steel Company*, 76 N. L. R. B. 670, 671-672 (decided March 16, 1948).

> This proviso [to Section 10 (c)] constitutes, in effect, Congressional rejection of the Board's prior view that mere affiliation with a national federation places a labor organization in such a different position from an organization not so affiliated as to warrant the use of different remedies when employer assistance or control has been found.

The language chosen in Section 10 (c), as the Committee Report states (H. Conf. Rep. No. 510, 80th Cong., 1st Sess.), p. 55, "covers the specific abuse which has come to the attention of Congress." In the light of this legislative history it appears that Congress intended to give equal treatment to all local unions which were alleged to be company dominated or assisted. And it appears that by the words "affiliated with a labor organization national or international in scope" Congress intended to refer to the A. F. L. or C. I. O., with which such a local might be affiliated, either directly or indirectly.[3]

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[3] It seems likely that Congress used the term "labor organization" rather than the word "federation" because the C. I. O. does not use the word "federation" in its name. Compare the use of the words "labor organization" rather than "union" throughout the Act. Main Brief for the Board, pp. 107–108, note 41. This terminology also required that both the words "national" and "international" be used. For while the A. F. L. and the C. I. O. are regarded as "national" federations, when the "scope" of their activities is referred to, as in Section 10 (c), they may conceivably be thought of as "international," since some unions affiliated with the C. I. O. and the A. F. L. have locals in Canada.

Thus, Congress did not conceive of the phrase "labor organization national or international in scope" as referring at all to the national or international unions. Affiliation with a national or international union, the Telephone Workers, for example, was irrelevant to the Board's policy which Congress intended to reverse. That policy, as the Board pointed out in the *Carpenter Steel* case, *supra,* turned entirely upon affiliation with a major federation, either the A. F. L. or C. I. O. It would therefore have been pointless to refer in Section 10 (c) to national or international unions.

It follows that the phrase "labor organization national or international in scope," as used in Section 10 (c), cannot have been intended by Congress to have the same meaning as the term "national or international labor organization" as used in Section 9 (f), (g), and (h). The latter term was unquestionably intended to refer to national or international unions; the only issue is whether it refers also to federations. In view of the legislative history, respondent's argument that since the federations were referred to in Section 10 (c) they must also have been referred to in Section 9 (f), (g), and (h), has no more validity than an argument that since the national and international unions are referred to in Section 9 (f), (g), and (h) they must also have been referred to in Section 10 (c).

Our contention is that whatever the purpose and legislative history of Section 10 (c) shows as to the meaning which Congress intended to attach to the non-technical phrase used in that Section, that purpose and legislative history are not relevant to the term of art which was used in Sections 9 (f), (g), and (h). To show that Congress did not use the term "national or international labor organization" in Sections 9 (f), (g), and (h) in its normal labor relations sense respondent would have to show, from the purpose and legislative history of those Sections, that Congress intended to attach a different meaning to that term. This respondent has not done, and we believe it cannot do so. Since the purpose of Congress in Section 9 (h), entirely unlike its purpose in Section 10 (c), was to apply the affidavit requirement only to those persons who were empowered by virtue of their union office to call political strikes "*without* advocacy or persuasion," *American Communications Association v. Douds*, 339 U. S. 382, 396, and since federation officers do not, by virtue of their federation office, possess or exercise such power over autonomous national or international affiliates, the affidavit requirement may not properly be deemed applicable to them.

## II

With the Court's permission, we should also like to clarify the present compliance status of

the C. I. O. The records of the Board and th Secretary of Labor show that the C. I. O. cam into compliance on December 22, 1949; it is no in compliance. On the basis of documents a ready filed, the C. I. O. will remain in compliance with Section 9 (f) until September 30, 1951, a the earliest. On the basis of the affidavits pres ently on file, the C. I. O. will remain in compli ance with Section 9 (h) at least until Novembe 24, 1951. It could lapse from compliance prio to that time only if, in the interim, a new officer i elected and takes office without filing an affidavit

Respectfully submitted.

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